

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Paula White-Harris,

Plaintiff

v.

Carolyn W. Colvin, Acting Commissioner of Social
Security,

Defendant

2:15-cv-01340-JAD-NJK

**Order and Judgment Affirming Denial
of Social Security Benefits**

[ECF Nos. 19, 26, 28¹]

Plaintiff Paula White-Harris applied for disability insurance based on her various physical and mental impairments.² The Social Security Administration (the “Commissioner”) denied her application,³ and an Administrative Law Judge upheld the agency’s decision.⁴ The ALJ’s decision therefore became the Commissioner’s final decision. Harris now seeks judicial review of that decision, arguing that I should reverse it or remand the case back to the Commissioner.

I referred this case to U.S. Magistrate Nancy Koppe for findings and recommendations on Harris’s motion to remand and the Commissioner’s cross-motion to affirm the denial. After thoroughly evaluating the parties’ arguments, Judge Koppe recommends that I deny Harris’s motion and grant the Commissioner’s cross-motion to affirm.⁵ Harris objects.⁶ She raises various arguments, but having reviewed the record de novo, I agree with Judge Koppe that the ALJ’s decision was supported by substantial evidence and not based on legal error. I thus deny Harris’s

¹ I find these motions suitable for disposition without oral argument. Nev. L.R. 78-2.

² Administrative Record (“AR”) 199–211.

³ *Id.* at 149–52, 156–62.

⁴ *Id.* at 19–30.

⁵ ECF No. 28.

⁶ ECF No. 29.

1 motion, grant the Commissioner's motion to affirm, and adopt Judge Koppe's recommendation.

2 **Discussion**

3 Harris offers five objections to Magistrate Judge Koppe's report: "(1) the Magistrate did not
4 hold Defendant to the 'substantial evidence' standard of review"; "(2) the Magistrate improperly
5 rejected compelling arguments made by Plaintiff as 'waived'"; (3) the Magistrate wrongly found
6 Harris not credible; (4) the magistrate judge misapplied the rules for crediting a claimant's treating
7 physician; and (5) the magistrate judge wrongly affirmed the "ALJ's failure to consider Plaintiff's
8 impairments in combination."⁷

9 Two of these objections warrant little attention. Harris's first objection is simply that there is
10 not substantial evidence to support the ALJ's determinations.⁸ But she provides no analysis or
11 evidence to support this argument, so I need not consider it.⁹ Harris's second objection is similarly
12 without merit: the ALJ was within her discretion when she deemed as waived the arguments Harris
13 raised for the first time in her reply briefing.¹⁰ This leaves me to evaluate just three arguments: (1)
14 whether the ALJ's credibility determination was proper, (2) whether the ALJ misapplied the rules
15 governing treating physicians, and (3) whether the ALJ wrongly ignored Harris's arguments about
16 combining her disabilities.

17 **A. Standard of Review**

18 I may set the ALJ's determination aside only if the ALJ's finding is not supported by
19 substantial evidence or is based on legal error.¹¹ "Substantial evidence means more than a scintilla
20 but less than a preponderance"; it is evidence that "a reasonable person might accept as adequate to
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23 ⁷ ECF No. 29 at 1–2.

24 ⁸ *Id.* at 2.

25 ⁹ *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 582 n.3 (D. Nev. 2013); Nev. LR 7-2(d).

26 ¹⁰ *Graves v. Arpaio*, 623 F.3d 1043, 1048 (9th Cir. 2010).

27 ¹¹ *Jamerson v. Chater*, 112 F.3d 1064, 1066 (9th Cir. 1997); *Smolet v. Chater*, 80 F.3d 1273, 1279
28 (9th Cir. 1996).

1 support a conclusion.”¹² If the evidence is subject to more than one rational interpretation, one of
 2 which supports the ALJ’s decision, I must affirm.¹³ I have the authority to enter “a judgment
 3 affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or
 4 without remanding the cause for a rehearing.”¹⁴ I may also order the Commissioner to collect
 5 additional evidence, “but only upon a showing that there is new evidence [that] is material and that
 6 there is good cause for the failure to incorporate such evidence into the record in a prior
 7 proceeding.”¹⁵

8 Harris is entitled to disability benefits under the Social Security Act if she (a) “suffers from a
 9 medically determinable physical or mental impairment . . . that has lasted or can be expected to last
 10 for a continuous period of not less than twelve months; and (b) the impairment renders [her]
 11 incapable of performing the work . . . [she] previously performed and incapable of performing any
 12 other substantial gainful employment that exists in the national economy.”¹⁶ If Harris demonstrates
 13 that she cannot perform her prior work, the burden shifts to the Commissioner to show that Harris
 14 can perform a significant number of other jobs that exist in the national economy.¹⁷

15 **B. The ALJ’s credibility determinations are adequately supported by the record.**

16 Harris argues that the ALJ was predisposed to disbelieving Harris, and that her finding that
 17 Harris was not credible is unsupported by the record. But the ALJ’s adverse credibility finding was
 18 well supported by substantial evidence. Harris’s evaluators found her to be untrustworthy. The ALJ
 19 noted that Dr. Cross opined that Harris was not reliable, exaggerated her symptoms, and was not
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22 ¹² *Flaten v. Sect’y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995).

23 ¹³ *See Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

24 ¹⁴ 42 U.S.C. § 405(g).

25 ¹⁵ *Id.*

26 ¹⁶ *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

27 ¹⁷ *Hoopai v. Astrue*, 499 F.3d 1071, 1074-75 (9th Cir. 2007).

1 truthful.¹⁸ And evidence in the record contradicted Harris’s statements about her conditions.

2 The ALJ relied on the fact that objective evidence did not support Harris’s subjective claims
3 about pain in her wrists, knees, abdomen, back, and her mental status.¹⁹ The ALJ also pointed to
4 Harris’s overall lack of treatment and that her evaluating doctors found that she required no
5 significant treatment.²⁰ Finally, the ALJ relied on the fact that Harris admitted that she was able to
6 do daily activities—including paying bills, cooking, cleaning, shopping, and driving—which
7 contradicted her testimony before the ALJ.²¹ In sum, the ALJ’s credibility finding was well
8 supported by substantial evidence.

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10 **C. The ALJ’s decision to discount the opinion from Harris’s treating physician is supported by the record.**

11 Harris next argues that the ALJ wrongly discounted the opinion of her treating physician.
12 Generally, “[t]he opinions of the applicant’s treating physicians are entitled to more weight than the
13 opinions of doctors who do not treat the claimant.”²² But an ALJ may reject a treating physician’s
14 opinion if there is substantial evidence contradicting it.²³ When rejecting a treating physician’s
15 opinion, the ALJ should cite “specific and legitimate reasons” for doing so.²⁴

16 The ALJ identified specific, legitimate reasons for discounting Harris’s treating physician’s
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18 ¹⁸ ECF No. 15-1 at 490; *id.* at 492 (“The claimant has inconsistencies and appears to be
19 exaggerating.”).

20 ¹⁹ See ECF. No. 15-1 at 507–10 (physicians finding no significant problems with wrists, knees, legs,
21 or ankles); *id.* at 518 (same); *id.* at 441 (reporting no pain); *id.* at 490–93 (psychological evaluation
22 showing Harris capable of carrying out complex instructions, etc.); *id.* at 631 (additional psychiatric
23 evaluation showing largely normal results); *id.* at 675–78 (evaluation showing Harris able to carry
out most mental abilities needed for unskilled work).

24 ²⁰ *Id.* at 549, 659, 625–28.

25 ²¹ See *id.* at 491–92 (Harris reporting she is able to take care of her basic needs).

26 ²² *Hostrawser v. Astrue*, 364 F. App’x 373, 375 (9th Cir. 2010).

27 ²³ *Id.*

28 ²⁴ *Orn v. Astrue*, 495 F. 3d 625, 634 (9th Cir. 2007).

1 opinion, and those reasons are supported by substantial evidence in the record. The ALJ discounted
 2 the opinion of Harris's treating physician, Dr. Nwaba, because her opinion was inconsistent with the
 3 objective evidence in the record, which showed mostly normal evaluations.²⁵ Dr. Cross's opinion
 4 contradicted Harris's treating physician as well—and Cross's opinion was based on an in-person
 5 examination and specific facts.²⁶ Dr. Cross's opinion and the objective evidence contradicting
 6 Harris's treating physician is substantial evidence supporting the ALJ's decision to discount Harris's
 7 treating physician's opinion.²⁷

8 **D. The ALJ properly considered Harris's impairments together.**

9 Harris finally offers a conclusory objection that the ALJ failed to consider the combined
 10 impact of Harris's impairments. But in rejecting her claim, the ALJ considered all of the evidence in
 11 the record about Harris's impairments. The ALJ considered plaintiff's allegations, albeit discounted
 12 because of her adverse credibility determination.²⁸ And the ALJ considered Harris's physicians'
 13 opinions about her impairments.²⁹ The ALJ took all of this evidence into account when denying
 14 Harris's claim. I thus find that the ALJ did not improperly fail to consider Harris's impairments in
 15 combination.

16 **Conclusion**

17 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff
 18 Paula White-Harris's Motion for Summary Judgment [ECF 19] is **DENIED** and that her Objections
 19 to Magistrate Judge Koppe's Report and Recommendation [ECF 29] are **OVERRULED**.

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 24 ²⁵ See ECF. No. 15-1 at 507–10; *id.* at 518; *id.* at 441; *id.* at 490–93; *id.* at 631; *id.* at 675–78.

25 ²⁶ See *id.* at at 490–91; *see also id.* at 33–35.

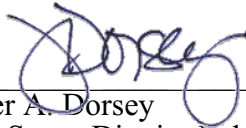
26 ²⁷ See *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2002).

27 ²⁸ ECF. No. 15-1 at 25–27.

28 ²⁹ *Id.* at 28.

1 IT IS FURTHER ORDERED that Magistrate Judge Koppe's Report and Recommendation
2 [ECF 28] is **ADOPTED** and the Commissioner's Cross-Motion to Affirm [ECF 26] is
3 **GRANTED.**

4 Dated this 24th day of October, 2016

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Jennifer A. Dorsey
United States District Judge